

REMARKS

As a preliminary matter, Examiner has objected to the drawings under 37 CFR 1.83(a) as failing to show every feature of the invention specified in the claims. Paragraph [0021 of the specification has been amended to clarify that element 12 shows a computer in the base 11 which can act as both a monitoring unit and, clearly, a control unit. As such, Applicants respectfully assert that the drawings are now in proper form. Therefore, Applicants respectfully request Examiner withdraw the objection to the drawings under 37 CFR 1.83(a).

As another preliminary matter, Examiner continues to reject Claim 13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection seems to stem from a misunderstanding of the term "parallel beam path" as described in Claim 13. In particular, it was explained to Examiner during the July 7, 2011 telephonic interview how the parallel beam path is the part of a **single** illumination beam path that has boundaries which are parallel to each other. As such, Examiner agreed that his interpretation of the claim language as only being applicable to a binocular set-up with two beam paths that are parallel to each other is incorrect. As such, Examiner agreed that Claim 13 does comply with the written description requirement. Therefore, Applicants respectfully request Examiner withdraw the rejection of Claim 13 under 35 U.S.C. § 112, first paragraph.

As a final preliminary matter, Examiner has rejected Claims 14 and 24-26 under 35 U.S.C. § 112, second paragraph as being indefinite. Applicants began to explain to Examiner why these claims are not indefinite during the telephonic interview held with Examiner on July 7, 2011, when Examiner politely interrupted and explained that he was concerned with the indefiniteness rejection and was prepared to withdraw it. Therefore, Applicants respectfully request Examiner withdraw the rejection of Claims 14 and 24-26 under 35 U.S.C. § 112, second paragraph as being indefinite.

Examiner has rejected Claims 13 and 21-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2003/0007124 to Levine ("Levine") in view of either U.S. Patent Application Pub. No. 2002/0060786 to Platt ("Platt") or U.S. Patent Application Pub. No. 2003/0137655 to Wegmann ("Wegmann"). In addition,

Examiner has rejected Claims 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Levine in view of Platt or Wegmann, and further in view of U.S. Patent No. 6,585,723 to Sumiya (“Sumiya”).

Claim 13 stands currently amended to include the limitations of Claim 16, and Claim 16 stands currently canceled. Claim 18 also stands currently canceled, and Claims 1-12, 17, 19, 20, and 27-29 stand previously canceled. Claims 13-15 and 21-26 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner’s outstanding rejections to current Claims 13-15 and 21-26. An early Notice of Allowance is therefore requested.

I. ANY NEXT OFFICE ACTION CANNOT BE MARKED FINAL

As is explained below, Examiner admits that the incorporation of Claim 15 (which is currently rejected) into Claim 13 overcomes the current cited art. As such, any next Office Action rejecting the claims would have to include a new reference to teach the deficiency of the currently cited references. Such inclusion of a new reference necessitates that the Office Action be marked as non-final.

More specifically, the MPEP clearly states that a second or any subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on **prior art not of record**, of any claim amended to include limitations which should reasonably have been expected to be claimed. MPEP § 706.07(a). Since the amendment to independent Claim 13 is derived from language already present in a dependent claim (i.e., Claim 16), the claim amendments only include limitations which should reasonably have been expected to be claimed. Therefore, any next Office Action which cites a new reference **cannot** be marked as final.

II. SUMMARY OF RELEVANT LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the

prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness and must show that the references relied on teach or suggest all of the limitations of the claims.

III. REJECTION OF CLAIMS 13, 21, AND 23-26 UNDER 35 U.S.C. § 103(A)
BASED ON SUMIYA IN VIEW OF EITHER PLATT OR WEGMANN

On page 6 of the current Office Action, the Examiner rejects Claims 13, 21, and 23-26 as being unpatentable over Sumiya in view of either Platt or Wegmann. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Amended, independent Claim 13 states, in part:

“wherein the illumination source generates narrow-band light in the short-wavelength range of around 365 nm.” (emphasis added*).

This language was previously present in Claim 16, which is now canceled. Examiner has interpreted this claim limitation to be broad enough that the teaching of Levine of using a Krypton source which emits light in the mid-600 nm range is sufficient to teach this limitation. This, however, is clearly an overly broad and unreasonable interpretation of the above limitation of Claim 13.

As explained to Examiner during the July 7, 2011 telephonic interview, it is one of ordinary skill in the art would never interpret “around 365 nm” to include values around twice the listed wavelength (as Examiner asserts). In addition, a Xenon light source appears to emit light with a wavelength of about 150 nm and 173 nm. See <http://en.wikipedia.org/wiki/Xenon>. This also does not reasonably disclose the claimed wavelength range, as it is off by over 200 nm, and is less than half of the claimed range.

In addition, the specification of the current Application makes it clearly that the range of “about 365 nm” should be interpreted to be exactly that, plus or minus a few

nanometers. Application, [0018] ("The spectral bandwidth of the illumination radiation is limited to 365 nm +/- 5 nm, for example, by suitable filters 4." (emphasis added)).

As such, Examiner agreed that the proper interpretation of "about 365 nm" should be 365 nm +/- 5 nm. Thus, Examiner agreed that the currently cited references do not render Claim 13 obvious.

In addition, Levine requires a uniform "grid" in order to do a wavefront measurement according to Tscherning. Any irregularity in this grid would make the wavefront measurement much more complicated or quite probably impossible. The "trick" of a wavefront sensor is the regular grid of point sources. As such, any deviation from the expected position (i.e., irregularity) of the image of the point sources is created by the object being measured. This means that one of ordinary skill in the art would never combine the changeable patterns of Platt or Wegmann, with the teachings of Levine which require a uniform grid.

For the reasons set forth above, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of anticipation of independent Claim 13, and corresponding Claims 21, and 23-26 because they are each ultimately dependent from Claim 13. Therefore, Applicant respectfully requests that Examiner remove the rejection of Claims 13, 21, and 23-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,585,723 to Sumiya in view of either U.S. Patent Application Pub. No. 2002/0060786 to Platt or U.S. Patent Application Pub. No. 2003/0137655 to Wegmann.

IV. REJECTION OF CLAIMS 14 AND 15 UNDER 35 U.S.C. § 103(A) BASED ON LEVINE IN VIEW OF PLATT/WEGMANN AND SUMIYA

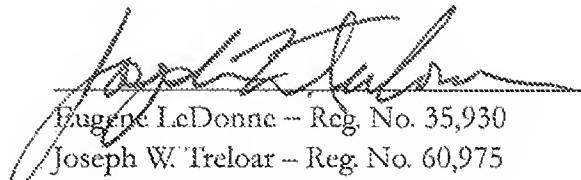
On page 9 of the current Office Action, the Examiner rejects Claims 14 and 15 as being unpatentable over Levine in view of Platt/Wegmann and Sumiya. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Claims 14 and 15 are each ultimately dependent from independent Claim 13. As Claim 13 is allowable, so must be Claims 14 and 15. Accordingly, Applicants respectfully assert that Examiner has failed to establish a *prima facie* case of obviousness of Claims 14 and 15. Therefore, Applicant respectfully requests that Examiner remove the rejection of

Claims 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2003/0007124 to Levine in view of U.S. Patent Application Pub. No. 2002/0060786 to Platt or U.S. Patent Application Pub. No. 2003/0137655 to Wegmann, and further in view of U.S. Patent No. 6,585,723 to Sumiya.

Based upon the above remarks, Applicant respectfully requests reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicants' attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,



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